IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

In re:	)	
	)	
JEFFERSON COUNTY, ALABAMA,	)	**Case No. 11-05736-TBB**
a political subdivision of the State of	)	
Alabama,	)	**Chapter 9**
	)	
Debtor.	)	

ANDREW BENNETT, Jefferson County Tax Assessor, Bessemer Division, an elected official of Debtor; RODERICK V. ROYAL, Birmingham City Council President, an elected official of the City of Birmingham; STEVEN W. HOYT, Birmingham City Council President Pro Tempore, an elected official of the City of Birmingham; MARY MOORE, Alabama State Legislator, an elected official of the State of Alabama; JOHN W. ROGERS, Alabama State Legislator, an elected official of the State of Alabama; WILLIAM R. MUHAMMAD; CARLYN R. CULPEPPER, Lt. Col. Rt.; FREDDIE H. JONES, II; SHARON OWENS; REGINALD THREADGILL; RICKEY DAVIS, Jr.; ANGELINA BLACKMON; SHARON RICE; and DAVID RUSSELL,

Ratepayer/Creditors,

RATEPAYER/CREDITORS' SUPPLEMENT AND AMENDMENT TO OBJECTIONS FILED JULY 30, 2013, TO CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA

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IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

IN RE:	)	
	)	**Case No.: 11-05736-TBB-9**
JEFFERSON COUNTY, ALABAMA,	)	
	)	**Chapter 9 Proceeding**
DEBTOR.		
	)	

RATEPAYER/CREDITORS' SUPPLEMENT AND AMENDMENT TO OBJECTIONS FILED JULY 30, 2013, TO CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA

COME NOW ANDREW BENNETT, Jefferson County Tax Assessor, Bessemer Division, an elected official of Debtor; RODERICK V. ROYAL, Birmingham City Council President, an elected official of the City of Birmingham; STEVEN W. HOYT, Birmingham City Council President Pro Tempore, an elected official of the City of Birmingham; MARY MOORE, Alabama State Legislator, an elected official of the State of Alabama; JOHN W. ROGERS, Alabama State Legislator, an elected official of the State of Alabama; WILLIAM R. MUHAMMAD; CARLYN CULPEPPER, Lt. Col. Rt.; FREDDIE H. JONES, II; SHARON OWENS; REGINALD THREADGILL; RICKEY DAVIS, Jr.; ANGELINA BLACKMON; SHARON RICE; and DAVID RUSSELL (the "Ratepayer/Creditors") and submit this, their Supplement and Amendment to Objections Filed July 30, 2013, to the Chapter 9 Plan of Adjustment for Jefferson County, Alabama, as supplemented ("Plan"). Ratepayers are real parties in interest, have filed a Claim, and each is a special taxpayer pursuant to 11 U.S.C. Section 1109(b). Pursuant to 11 U.S.C. Section 943(a), each has a right to be heard with respect to this Objection. Further, pursuant to 11 U.S.C. Sections 1128 and 943(a), each has a right to object. Ratepayers respectfully request that the Court determine that the Plan is not feasible and is not in the best interest of creditors as required pursuant to 11 U.S.C. Section

943 (a) (7) and, hence, the Plan should not be confirmed.

In support of this filing, Ratepayer/Creditors submit and rely upon the following:

(1) the case law, legal arguments and/or exhibits included herein and in Ratepayer/Creditors' Objections to Plan of Adjustment filed July 30, 2013;

(2) the Declaration of Commissioner Bowman, who is the County Commissioner for District 1, the County district with the largest number of Sewer system ratepayers;

(3) the Declaration of Andrew Bennett, who is the Assistant County Assessor, Bessemer Cut; and

(4) the Declaration of Sheila Tyson, who is the newly elected City of Birmingham Councilwoman, a community association leader and public advocate.[1]

In support of this filing, Ratepayer/Creditors state as follows:

I. INTRODUCTION

On June 4, 2012, a group of Jefferson County elected officials and citizens who pay sewer fees and charges as users of the County Sewer System (the "System"), and who pay County Sewer Taxes which have been imposed Countywide to build the System since 1901 (hereinafter referred to as "Ratepayer/Creditors"), filed a Class Creditor Claim in this bankruptcy proceeding (hereinafter referred to as the "Ratepayers/Creditor Claim" or the "Claim"). This Claim was for overcharges of $1.63 billion in sewer charges resulting from the County's unlawful issuance and execution of over $8 billion in Swap/Warrants.

These Swap/Warrants were debt instruments comprised of two components: (1) Series 2002C, 2003B and 2003C warrants requiring the County to pay $3 billion in principal and

[1] The above three declarants will be called to give live testimony at the hearing on October 17th.

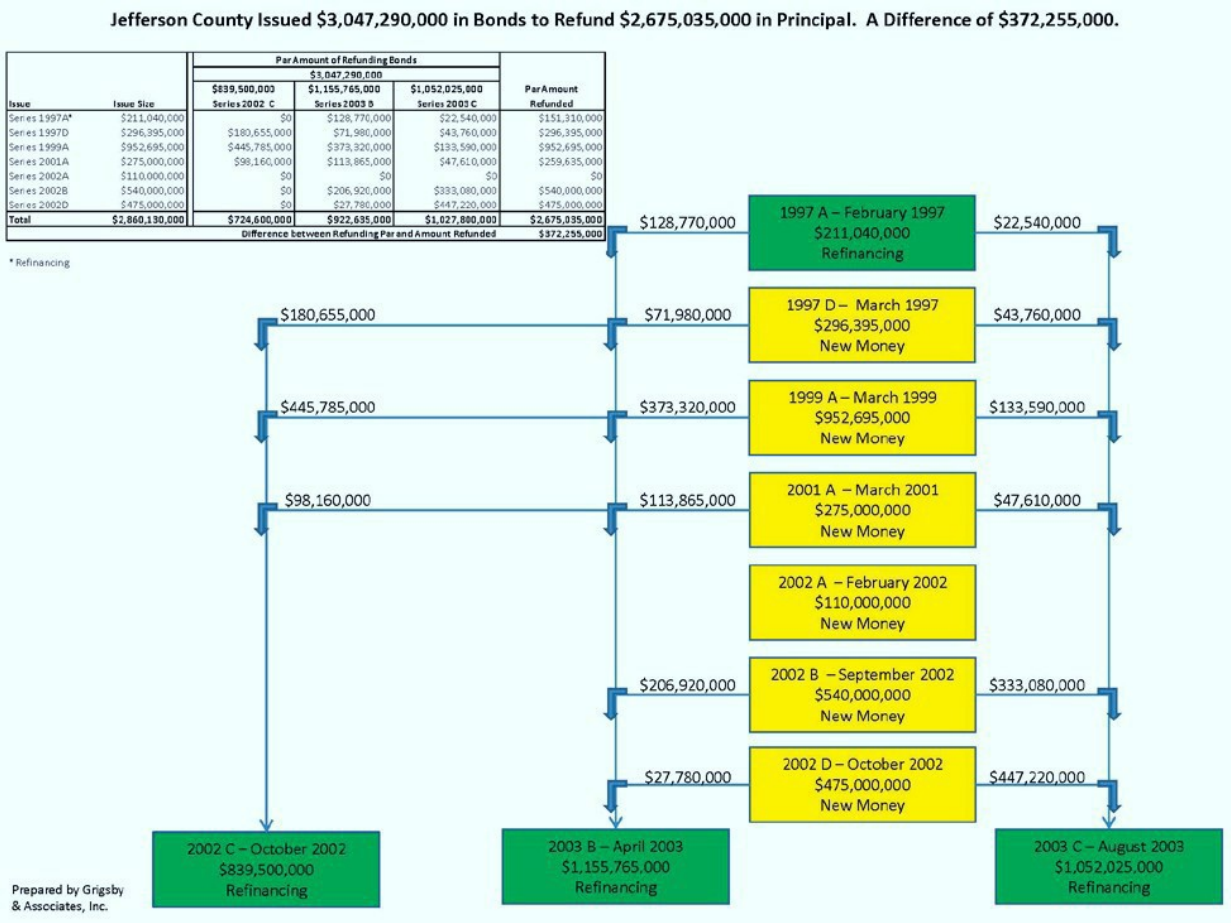
"adjustable interest," and (2) over $5 billion of contracts, purchased with the County's credit behind the proceeds of the $3 billion in warrants, called interest rate swaps (the warrant and swap contract components are collectively referred to hereinafter as "Swap/Warrants"). Each Official Statement for the Series 2002C, 2003B and 2003C warrants expressly stated that the purpose of the issue was to purchase interest rate swaps. These interest rate swaps were simulated to keep the interest on the adjustable rate warrants at a rate lower than the original $2.6 billion in warrants used to fund Sewer System projects (called "Project Warrants") but in actuality created another $5 billion in additional "notional" debt payable from Sewer Revenues.

The $5 billion in swap contracts required the County to pay a debt amount equal to the difference between a fixed rate or adjustable rate, and a second adjustable rate, both adjustable rates based on a different LIBOR interest rate index. LIBOR is a pseudonym for the adjustable rate at which banks borrow from each other. These Swap/Warrants did not work because the adjustable rate on the warrant component of the Swap/Warrants increased at a much higher rate than the adjustable payment in the swap contract component of the Swap/Warrants. The result was that the County did not have sufficient sewer fee collections to pay the debt due on either the $3 billion warrant debt component of the Swap/Warrant debt or the debt on the swap component of the Swap/Warrants of $5 billion. The County had substituted $2.6 billion in fixed rate debt for over $8 billion in Swap/Warrant debt which was far more expensive than the community served by the System could afford. In addition, the $8 billion in Swap/Warrant debt served no public purpose.

The roughly $200 million of remaining principal of the warrants not affected by the SEC cease and desist order discussed in the next paragraph—Series 1997A , 2001A and

2002A (hereinafter collectively referred to as the "Compliant Warrants)— have not been corruptly procured and should be classed in a separate unimpaired class from the Swap Warrants. There is no need to accelerate these warrants since their enforcement is not forbidden by law as with the Swap/Warrants. These Compliant Warrants and any unpaid interest could be repaid post-partition in the ordinary course of business thereby decreasing the size of the New Warrant issue and attendant costs.

In 2008, it was disclosed by the U.S. Securities and Exchange Commission that bribes had been paid by JPMorgan, Goldman Sachs and certain local broker dealers to corruptly procure the issuance of three series of Swap/Warrants coupled with the County's purchase of related swap contracts: Series 2002C, 2003B and 2003C, as shown in the green boxes at the bottom of the following chart [the Project Warrants are shown in yellow]:



The Ratepayer/Creditors have alleged that these 3 series of Swap/Warrants in the green boxes immediately above were void from their inception because their issuance and execution were procured by fraud and bribery, because the $8 billion in Swap/Warrant debt violated the Alabama Constitution because the County's good credit was used to benefit private persons, and because levy and collection of the sewer fees to pay the $8 billion in Swap/Warrant debt was not approved by the voters as required by Amendment 73 to the Alabama Constitution.

Debtor's Chapter 9 Plan of Adjustment was originally filed on June 30, 2013 and was amended by submissions on July 29, 2013. It was additionally supplemented on September 30, 2013 with updated exhibits, including updated GO and sewer warrant indentures. (the Plan as amended on July 29, 2013 and supplemented about a week ago is

referred herein to as the "Revised Plan"). On July 30, 2013, Ratepayer/Creditors filed their Opposition to the June 30, 2013, disclosure statement and concurrently therewith their "RATEPAYER/CREDITORS OBJECTIONS TO PLAN OF ADJUSTMENT which is hereby incorporated herein by reference and will be referred to herein.

Ratepayer/Creditors object to the Revised Plan for the following reasons:

A. The Illegality of Swap/Warrants as Alleged in the Adversary Complaint is Not Being Compromised Properly and the County Debtor Has More Settlement Value than What They Have Agreed to Receive.

This Plan is aimed at mooting the Ratepayer/Creditors' AP Case 120 Claim of illegality as a compromise and settlement of contested claims. This proposed Plan compromise does not, however, go far enough and should be better. For the Plan to be confirmed, a necessary finding by the Court will be that the Plan has been proposed in good faith and is not replete with refinancings and other means forbidden by law, or compromises on illegality. 11 U.S.C. 1129(a)(3). The issue of illegality is being compromised and settled in the Plan for $1.1 billion in concessions plus contingent obligations that reduce the value of this settlement even more. Given the amount contributed by JPMorgan, concern that Swap Warrants are void *ab initio*, is the direct cause of the amount agreed to in the compromise so far. Their non-enforceability, based on the corrupt activities of JPMorgan, the Former managers of Debtor, and the Swap Warrant Trustee, is a defense to continued validity of all existing Swap/Warrant holders since "holder in due course" defenses do not apply to warrants issued under Alabama law. However, as shown by the Ratepayer/Creditors' Alternative Financing Plan (Plan Opposition pp. 8-10) the *prima facie* showing of illegality is not being compromised properly, and the County-Debtor will substantially increase settlement value in the interest of creditors by joining Ratepayer Creditors

in establishing the invalidity of the Swap Warrants. The Alternative Financing Plan costs the ratepayers $3.6 billion. The Debtor-Swap/Warrant holder compromise Plan costs $14.3 billion. This goes to the heart of whether the Revised Plan is in the best interest of creditors and is feasible under 11 USC 943(b)(7).

B. The Revised Plan is Infeasible and Should Not be Confirmed Under 11 USC 943(b)(7) because (1) Sewer Revenue Requirements Exceed the Financial Capability of the Users Connected to the Sewer System Under EPA User Household Capability Requirements, (2) the Revised Plan fails to comply wh Alabama Constitutional Amendment 73's Reasonableness Standard and (3) the Revised Plan does not Comply with Voter Approval Requirements of Alabama Constitutional Amendment 73

1. *The Plan Fails to Properly Evaluate The County's Reasonable Ability to Collect Sewer Revenues Given the Demographics and Median Income of Sewer Service Area*

The Revised Plan fails to ascertain the specific demographics of the roughly 140,000 households connected to the Sewer System and paying sewer fees which make up all directly pledged sewer warrant revenues (see, e.g. Economic and Demographic disclosure on pages 4-12 of June 30 Disclosure Statement). The Revised Plan deceives the Court because it is based on demographics and Median Income levels of the State of Alabama, Jefferson County as a whole, where almost half of the households are using septic tanks, and the Birmingham-Hoover MSA. Birmingham-Hoover, AL Metropolitan Statistical Area which consists of seven counties (Bibb, Blount, Chilton, Jefferson, St. Clair, Shelby, and Walker) centered around Birmingham. The population of this MSA as of the 2010 census was 1,128,047 and its demographics bear little resemblance to the Sewer System user base with respect to house hold income, percentage of household income paid for housing and utilities or percentages in single family or rental units. Under EPA consent decree guidelines a major consideration in establishing fair and reasonable and non discriminatory sewer rates is the user household financial capability (See Exhibit J to

Plan Opposition "GSO Guidance for Financial Capability Assessment and Schedule Development", p.3). The Consent Decree contemplated implementation costs of $30 million, which the County had to deposit into a trust fund. (See, Case 2:08-cv-01703-RDP Document 8-5 Filed 09/23/08 Pages 1-13.) The $3 billion now owed is 100 times the amount of the $30 million implementation cost contemplated under the Consent Decree, coupled with decline in median income among the sewer user base compared to the nation as a whole. The Court has not allowed any evidentiary hearings on this issue in connection with Ratepayer/Creditors AP 120 Complaint or as part of this Revised Plan Objection. The Debtor/County has presented no feasibility study showing that the financing plan for issuing new Sewer Warrants is fair and reasonable under the EPA guidelines for user household financial capability or Amendment 73 requirement for "reasonable and non-discriminatory" fixing of rates among users or Amendment 73 requirement for voter approval of levying and collection of sewer charges and fees.

Because there is no evidence of economic feasibility based demographic information on the actual user base, and there is no feasibility study showing compliance with EPA guidelines, and no showing of Amendment 73 "reasonableness" and "compliance with Amendment 73 voter approval requirements, the Revised Plan cannot be confirmed as fair and reasonable. Without knowing the quality of revenues or earnings there is no way to properly value the Sewer System for purposes of determining fair and equitable distributions. To be sure, all claimants who would object to the Plan because they are ratepayers who have been and will be wrongfully and unconstitutionally overcharged by the Revised Plan have even been allowed to vote on the Revised Plan even though they have timely filed claims in this proceedings and Adversary Proceedings claiming the lien which will enforce the sewer

overcharges is illegal under Alabama Law. The court must allow a full evidentiary hearing on the legality of the New Sewer Indenture recently proposed on September 30.

2. *The Median Household Income of the Users Paying Sewer Bills shows the Revised Plan is Not Confirmable*

It would be irrational given the actual historic decline in the Sewer Service Area of Median Household Income of actual System users paying sewer bills, that these same Sewer Users would be able to pay increases in user fees from $140 million/year which is the present level to $600 million/ year as outlined in the Financial Plan (see, Exhibit B to Plan Opposition). The Debtor /County has consistently presented misleading evidence on this issue. As an example, of the consultants to the County, GLC (see Exhibit A to initial Opposition to June 30 disclosure Statement, p. 20), shows the median income of Jefferson County of $45,000 as a basis to recommend rate increases, when the median income of actual user households is 50% less or roughly $30,000 (See Exhibit G to Plan Opposition). The Court must allow a full hearing on getting into the record the Median Household Income of the persons in census tracts actually connected to the Sewer System before confirming this Revised Plan as feasible. See, for example, Exhibit J to Plan Opposition showing those census tracts in the Sewer service area that are more than 20% *below* the poverty level. Only when these actual numbers are provided (and they are readily available from the Birmingham Waterworks billing computer which has zip codes that can be correlated to census tracts MHI as maintained on the U.S. Census database) can the value of the earnings of the System be considered by Creditors entitled to vote.

Instead of basing the Plan confirmation on relevant information on user MHI essential to valuation of the System earnings, the Court has, we think wrongfully, approved a Disclosure Statement that wrongfully suggests this information is not available:

"The sufficiency of the gross revenues from the operation of the Sewer

> System to pay debt service on the New Sewer Warrants, to pay operating expenses of the Sewer System, and to make capital expenditures necessary to maintain or expand the Sewer System may be affected by events and conditions relating to, among other things, population and employment trends, weather conditions, and political and economic conditions in the County, the nature and extent of which are not presently determinable." (Disclosure Statement, at p. 94)

The Court's confirmation must be based on correct valuation and accurate projection of revenues prior to a voting on the Plan. As authority see, In re Mount Carbon Metro. Dist., 242 B.R. 18, 37-38 (Bankr. D. Colo. 1999). In this case involving a water and sewer district, the bankruptcy court denied Plan confirmation because revenue projections were insufficient to determine feasibility of the Plan. It stated in relevant part:

> "On the most superficial level, the District has failed to establish the feasibility of the Plan because it has projected future revenues, but not future expenses. The omission is particularly glaring in light of (1) the District's proposed assumption of all executory contracts (at least four of which require infrastructure installation), (2) the District's need for additional water rights and water/sewer infrastructure in order to develop, and (3) the District's Service Plan. ***Without reasonable projections of future expenses to compare to future revenues, the District has failed to provide the evidence necessary to establish feasibility. *** The District's reliance upon landowners to cover all future infrastructure costs is unsupported by any evidence that landowners are able and willing to pay.*** According to the Plan Funder Agreement, the District cannot charge fees, increase taxes or secure any new financing without CDN's consent. Although the District may plan to charge for water and sewer service on a usage basis, no projections of such revenues were provided.

Ratepayer/Creditors have produced rudimentary information on MHI and the poverty existing in the Sewer User Area, however, more projections or feasibility studies showing the costs of the Plan are within the ability of the County System users' ability to pay must be mandated by the Court prior to any Plan confirmation or vote. Such studies must be made to determine if the Plan is fair and equitable and feasible under rule 943(b) (7). See, Prime Healthcare Mgmt. v. Valley Health Sys. (In re Valley Health Sys.), 429 B.R. 692, 711 (Bankr.

C.D. Cal. 2010) ("The court has an independent obligation to determine that a proposed plan meets the confirmation requirements of § 943(b), notwithstanding creditor approval. Mount Carbon, 242 B.R. at 36.")**.** this obligation is especially relevant here where Ratepayers with claims for overcharges and illegality of liens imposed on them by the Sewer Warrant Indentures have not been given their lawfully required right to vote on the Plan or right to vote on rate increases under Amendment 73.

C. The Refinancing of the Series 2002C, 2003B and 2003C with New Sewer Warrants is Not Legally Enforceable Because these Warrants are *Ultra Vires and Unenforceable* Because Issuance was Procured by Bribes. Net Proceeds from the Issuance were used to Purchase Swaps for Private Benefit—Not Projects, and the Lien on Sewer revenues is Unenforceable because the Levying and Collection of Sewer Fees Requires Voter approval

Ratepayer/Creditors have filed a Second Amended Adversary Complaint ("Complaint") asking for a declaration that the three series of warrants that were the subject of the SEC consent decree be declared null and void because (1) any government contract obtained through bribery and fraud is void and unenforceable, (2) the $8 billion in actual and notional debt used to replace the $2.6 billion in fixed rate debt was incurred to benefit private banking profits and not for the benefit of the public was not debt for sewer projects which are constitutionally permissible, and

(3) under Amendment 73, and fundamental due process, the voters have to approve any debt that could result in a lien on their property. (See Plan Opposition, pp. 8-25; Exhibit A, and F to Plan Opposition).

The net result of the relief requested would be an alternative plan that would finance $1.44 billion to pay in full all Compliant Warrants (or continue to amortize such warrants in

the ordinary course of business), *plus $1.24 billion of the Series 2002C, 2003B, and 2003C Swap/Warrants . This Alternative Financing Plan would refund, rescind and nullify for the County Ratepayers $10 billion in overcharges contemplated by the Revised Plan* (See, Plan Opposition "Alternative Plan resulting from a Determination of Swap/Warrant Invalidity") which reads in part:

> "The net result from this alternative financing Plan would be debt service of $91.5 million a year for 40 years which given the $140.6 million per year presently collected would leave $49 million for Operations and Maintenance and Capital Plant Replacement and Refurbishment costs. This Alternative Financing Plan could be accomplished without a Rate Increase which means that total collections from the Sewer Users represented by the Ratepayer/Creditors would be $3,658,288,888 instead of $14,328,013,000. (See, Exhibit B, page 2, column 1 heading). If the court follows Alabama Law as discussed below, the cost to the Ratepayer/Creditors is 26% or approximately ¼ of the cost required under the Plan.[1] Further, elimination of the need for a Rate Increase results in an investment grade rating on the new warrants and therefore a much lower interest cost."

Although the County as debtor has the exclusive right to submit a Plan or withdraw from Bankruptcy, the Debtor/County has no right to a Revised Plan components of which are not in accordance with Alabama Law under Rule 1129 (a) (3)[2] and Rule 943(b) (4).[3] The Debtor/County certainly has the right to adopt the Alternative Financing Plan and support the litigation costs and risks required to secure the Alternative Financing Plan so the creditors voting on the Plan can properly evaluate the cost and benefit of implementing the Alternative Financing Plan. Because the Series 2002C, 2003B and 2003C series were refundings an added benefit to having these Series declared a nullity would be the assurance that the New Sewer Warrants were the first refunding and therefore tax-exempt under IRC 149(g) (See, discussion, Plan Opposition Section VIII, "THE PLAN UNLAWFULLY PURPORTS TO REFINANCE SEWER WARRANTS USED TO PURCHASE INTEREST RATE SWAPS, PAY BRIBES AND EXCESSIVE SOFT COSTS IN VIOLATION OF INTERNAL REVENUE CODE

REQUIREMENTS THAT TAX EXEMPT DEBT BE USED FOR A PUBLIC PURPOSE RATHER THAN PRIVATE PURPOSES; ANY NEW SEWER BONDS MAY HAVE TO BE ISSUED ON A TAXABLE BASIS IF NOT VOID AB INITIO", pp. 31-32 of Plan Opposition.

Moreover, the legitimately issued Compliant Warrants, defined as all those not tainted by the bribery scandal, should be classified separately from the Swap/Warrants. Section 1122 provides that "a plan may place a claim or an interest in a particular class only if such claim or

[1] The court shall confirm the Plan if (3) the plan has been proposed in good faith and not by any means forbidden by law.

[2] The court shall confirm the Plan if (4) the debtor is not prohibited by law from taking any action necessary to carry out the plan.

interest is substantially similar to the other claims or interest of such class." 11 U.S.C.A. 1122 (1979) . The Plan must disclose to Sewer Warrant Holders and creditors *other than* Series 2002C, 2003B, and 2003C that their interests are different from the Swap/Warrants whose validity is being challenged.

D. The Revised Plan may Not be confirmed Unless There is a Sincere Attempt by the Debtor to readjust its Debts by maximizing the Creditors' Recovery.

The requirement that a Chapter 9 plan be "proposed in good faith and not by any means forbidden by law" is derived from 11 U.S.C. § 1129(a) (3), which is expressly incorporated in Chapter 9 by 11 U.S.C. § 901(a). Compliance with § 901 is a requirement for confirmation pursuant to § 943(b) (1). In the present case the Series 2002C, 2003B and 2003C Swap/Warrants [4]are tainted by the following Violations as found by the U. S. Securities and Exchange Commission:

> "VIOLATIONS
>
> 48. As a result of the conduct described above, J.P. Morgan Securities willfully violated Section 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from obtaining money "by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading" or engaging "in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser" in the offer or sale of securities or security-based swap agreements.
>
> 49. Also as a result of the conduct described above, J.P. Morgan Securities willfully violated Section 15B(c)(1) of the Exchange Act, which makes it unlawful for any broker, dealer or municipal securities dealer to "make use of the mails or any

[3] Paragraph 9 of the SEC Cease and Desist Order states:

> 9. The three bond offerings, with a total par value of about $3 billion, are: (1) an $839 million sewer bond offering that closed on October 24, 2002 ("the 2002-C bonds"); (2) a $1.1 billion sewer bond offering that closed on May 1, 2003 ("the 2003-B bonds"); and (3) a $1.05 billion sewer bond offering that closed on August 7, 2003 ("the 2003-C bonds").

means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of" the Municipal Securities Rulemaking Board ("MSRB").

> 50. Pursuant to Section 15B(b)(2) of the Exchange Act, the MSRB proposes and adopts rules governing the conduct of brokers and dealers and municipal securities dealers in connection with municipal securities. Pursuant to Section 21(d)(1) of the Exchange Act, the Commission is charged with enforcing the MSRB rules.
>
> 51. As a result of the conduct described above, J.P. Morgan Securities willfully violated MSRB Rule G-17, which states that in the conduct of its municipal securities business, every "broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." (See, SECURITIES ACT OF 1933 Release No. 9078 / November 4, 2009; SECURITIES EXCHANGE ACT OF 1934 Release No. 60928 / November 4, 2009; ADMINISTRATIVE PROCEEDING File No. 3-13673, p. 9).

The SEC footnote to this section states instructively: "A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949))."

Rather than joining Ratepayer/Creditors in invalidating these Swap Warrants, Debtor not only totally concedes that these Series 2002C, 2003B and 2003C Swap/Warrants are legal, valid and binding even though the SEC says they were procured by "deceptive, dishonest, or unfair practice[s]", the Disclosure states it is a Plan requirement for the Court to validate the warrants replacing these putatively unlawful Swap Warrants:

> Pursuant Bankruptcy Code sections 944(a), 944(b)(3), 105(a), and 1123(b)(6), from and after the Effective Date, confirmation of the Plan shall be a binding judicial determination that the New Sewer Warrants, the New Sewer Warrant Indenture, the Rate Resolution, and the covenants made by the County for the benefit of the holders thereof (including the revenue and rate covenants in the New Sewer Warrant Indenture) will constitute valid, binding, legal, and enforceable obligations of the County under Alabama law and that the provisions made to pay or secure payment of such obligations are valid, binding, legal, and enforceable security interests or liens on or pledges of revenues (Case 11-05736-TBB9 Doc 1817 Filed 06/30/13 Page 195 of 247)

The Swap/Warrants are not legal, valid, and binding obligations as outlined in the Complaint in AP Case 120. Lumping these warrants into the same class as Compliant Warrants and having the Plan

confirm that replacement New Warrants, which carries forward the same defect of illegality, is a clear violation of Rule 1129(a)(3). As stated in the leading case in this area, In re Mount Carbon Metro. Dist., 242 B.R. 18, 39-41 (Bankr. D. Colo. 1999):

> "Decisions considering good faith in a Chapter 9 context have addressed abuse of the bankruptcy procedure and unfair treatment of certain parties. Under the Bankruptcy Act, the United States Supreme Court reversed confirmation of a Chapter IX plan where the circumstances surrounding creditors' acceptances of a plan were ***tainted by unfair dealing, breach of fiduciary obligations, and the need for protection of one class from encroachments of another***. Am. United Mutual Life Ins. Co. v. City of Avon Park, Fla., 311 U.S. 138, 85 L. Ed. 91, 61 S. Ct. 157 (1940). More recently, confirmation of a Chapter 9 plan was reversed for lack of good faith because ***a property owner whose future tax obligations were unfairly impacted was denied due process***. Ault v. Emblem Corp. (In re Wolf Creek Valley Metropolitan Dist. No. IV), 138 B.R. 610 (D. Colo. 1992). These decisions are fact specific. They reflect the general rule that a Chapter 9 plan proposed in good faith must treat all interested parties fairly and that the efforts used to confirm the plan must comport with due process. However, they do not set out a comprehensive framework against which the good faith of a Chapter 9 plan should be tested." (Emphasis Supplied).

This principle was applied in In re Pierce County Hous. Auth., 414 B.R. 702, 719-720 (Bankr. W.D. Wash. 2009) where the court noted that:

> "Most courts agree that the determination of whether a plan has been proposed in good faith "requires a factual inquiry of the totality of the circumstances." Mount Carbon, 242 B.R. at 39. Factors a court should examine include: "(1) whether a plan comports with the provisions and purpose of the Code and the chapter under which it is proposed, (2) whether a plan is feasible, (3) whether a plan is proposed with honesty and sincerity, and (4) whether a plan's terms or the process used to seek its confirmation was fundamentally fair." Mount Carbon, 242 B.R. at 40-41."

The *Pierce* court also noted that in certain circumstances, "Debtor's lack of good faith in filing the Petition is evidenced by its failure to investigate and pursue allegedly viable claims." The totality of the circumstances here are unprecedented. We have both a SEC cease and desist order and a Eleventh Circuit decision in *U. S. v Langford* showing the three Series of Swap/Warrants are legally unenforceable. In the Complaint we make allegations to connect the dots to show how the bribes created a Swap Warrant financing for the benefit of the private

companies issuing, insuring, and executing the Swap/Warrants. To ask the court to "sweep these allegations under the rug" where the benefit to creditors would be substantial is unconscionable and clearly not in good faith. As the court stated in *Pierce* in connection with the failure to pursue certain insurers and potential guarantors:

> "The Debtor has failed to state a valid reason why the Post-Confirmation Committee should be prevented from evaluating this claim. The Court concludes that a preponderance of the evidence indicates that it is not in the best interest of creditors to allow the Debtor to remove this determination from the Post-Confirmation Committee. After evaluating the claim, the Committee may decide that there is no potential liability or that the cost of pursuing such claim outweighs any potential benefit. This decision, however, is a valuable right that the Debtor should not eliminate under the terms of its Amended Plan. ***To do so is an attempt to cut-off potential sources of funds for payment of claims and also raises the issue of whether the Debtor's Amended Plan has been proposed in good faith***."

The ultimate irony here is that the Ratepayers and Taxpayers of Jefferson County are paying the legal fees of County attorneys who are not pursuing obvious claims that save $10 billion in taxes and fees to be charged to the Ratepayer/Creditors under the Plan. The lack of good faith is self evident.

E. The Plan Cannot Be confirmed Without (1) Separately Classifying Sewer Warrant Claims for that were not subject to the SEC Decree and (2) Separately Classifying Ratepayer/Creditors Claim

Failure to separately classify the Ratepayer/Creditors claim is fatal to confirmation, and therefore the Court should not let the Plan be voted on without amending the Disclosure Statement to cure this defect under 11 USC 1123 made applicable to Chapter 9 under 11 USC 901(a) so the Ratepayer/Creditors can exercise their fundamental voting rights. Right now, Ratepayer/Creditors appear to be grouped in Class 6, general unsecured claims, and the County-Debtor intends to file a post-confirmation objection to allowance of these Claims for lack of

standing. The County-Debtor's argument that Ratepayer/Creditors have no standing, and the Debtor only has standing, needs amendment to the Disclosure Statement that if the Debtor is not successful in this position, this would be fatal to confirmation.

> "Subsection (a) of section 1123 of the Bankruptcy Code, 11 U.S.C.S. § 1123(a), addresses those matters which "shall" be included in a plan, as compared to subsection (b) which addresses permissive plan contents. The mandatory contents of section 1123(a)(4) provide that a plan shall provide for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest. " In re Wermelskirchen, 163 B.R. 793 (Bankr. N.D. Ohio 1994)

The swap component termination payment due from the County of the Series 2002C, 2003B and 2003C Swap/Warrants was nullified pursuant to the SEC Consent Decree as to JPMorgan and the Attorney General's settlement of the Swap antitrust cases as to Bank of America. However the warrant components of the Series 2002C, 2003B and 2003C Swap/Warrants are still subject to cancellation based upon the bribes and price-fixing allegations as claims which violates the best interest of creditors as set forth in § 943(b)(7). (See, In re Pierce County Hous. Auth., 414 B.R. 702, 716 (Bankr. W.D. Wash. 2009). The claims of Sewer Warrant Holders of Series Defaults in paying the Swap/Warrants that fraudulently ballooned the County's fixed rate Project Warrants issued from 1997 to 2002 from $2.6 billion to $8 billion is the direct cause of the County's insolvency. Yet the Disclosure Statement is drafted to give these Swap/Warrants priority without any disclosure of their vulnerability to be determined invalid. This lack of disclosure is unfair to all classes of creditors. In particular, in an apparent attempt manipulate the voting, the Debtor has created creditor classes which combine valid adjustable rate Project Warrants and even fixed rate warrants with contested "adjustable rate" Swap/Warrants and has refused to even acknowledge Ratepayer/Creditors registered claim (See Exhibit C to Plan Opposition). This Claim is the largest single claim in this bankruptcy and the most important in terms of the benefit it brings to the creditors who were not the progeny of the bribery and other wrongdoing that procured the Swap/Warrants. Accordingly, under the Rules,

this Claim must be given a separate classification and appropriate voting rights as an impaired claim.

The Plan discloses a settlement of the issue of whether the Swap/Warrants are *ultra vires* and states that the lien on sewer revenues backing the Sewer/Warrants is legal, valid and binding even though this issue has not been heard on the merits. The Disclosure Statement should thus provide adequate disclosure of the contending issues that Ratepayer/Creditors have raised with respect to whether the claims of the Swap/Warrant holders are *ultra vires* and other legal issues associated with defects in the initial offering, including why and how the debtor County has joined with the holders of Swap/Warrants, so that creditors have both sides of the issue before they vote on the Plan. These issues are discussed in greater length in the Plan Opposition incorporated by reference herein.

The County Debtor's is not justified in accepting the $14.3 billion financing plan over the $3.6 billion Alternative Financing Plan. Ratepayer/Creditors contend that the alternative $3.6 billion financing plan should have been the true value of the settlement of Sewer Claims. If the true value of the settlement is higher than $3.6 billion that could only occur if the Ratepayer/Creditors do not prevail in their Adversary Proceeding.

The county should join the Ratepayer/Creditor's Claim. Instead, the Debtor/County has failed to properly classify the claim as a class claim with the result that under Section 1129 the risk is the court cannot confirm the Plan. The failure to classify and treat the Ratepayer/Creditors Claim would make the Plan unconformable due to Sections 1122's and 1123's requirement of proper classification and treatment. As the Eleventh Circuit stated in Olympia & York Fla. Equity Corp. v. Bank of New York (In re Holywell Corp.), 913 F.2d 873, 879-880 (11th Cir. Fla. 1990):

> "Section 1129 of the Bankruptcy Code provides two mechanisms for confirmation of a Chapter 11 plan of reorganization. The first requires satisfaction of all subsection (a) requirements, including (a)(8), which necessitates acceptance of the plan by all impaired classes or interests. The second mechanism, the mechanism by

which the plan was confirmed in this case, incorporates all the requirements of subsection (a), except for (a)(8), and requires that the plan not discriminate unfairly and be fair and equitable with respect to each class of impaired claims or interests that has not accepted the plan. At issue in this appeal is whether the Bank's plan complies with the applicable provisions of title 11, namely section 1122. See 11 U.S.C. § 1129(a)(1) (requiring that the plan comply with the provisions of title 11). Also at issue is whether the Bank's plan discriminates unfairly with respect to MCJV, a creditor who is impaired under, and who has not accepted the plan. See 11 U.S.C. § 1129(b)(1) (requiring that the plan not discriminate unfairly with respect to classes of impaired claims)."

F. Under 11 USC 943, Ratepayer Creditors are special tax payer that may object to confirmation of the Plan.

Because of the lien imposed on ratepayers' property by the County (see, Exhibit F to Plan Opposition) for non-payment of sewer bills or sewer taxes intercepted by the 1997 Indenture, they are special taxpayers under Rule 943(a). This gives the Ratepayer/Claimants a right to a full class hearing on their objection to the Revised Plan.

G. The Plan Cannot be Confirmed because it violates Under Rule 904 since its provisions require the Court to legally Validate New Debt with Rate covenants fixing Sewer Rates and Controlling Expenditures on Capital Improvements and municipal services operations costs or otherwise control the rights of the Ratepayer/Creditors indirectly through the mechanism of proposing a plan of adjustment of the municipality's debts that would in effect determine the municipality's future tax and spending decisions.

See, In re Pierce County Hous. Auth., 414 B.R. 702, 715 (Bankr. W.D. Wash. 2009). The Revised Plan may not legally have the Court set sewer rates for the next 40 years, with the right to be exercised by New Warrant Holders to escalate those rates under certain circumstances locks in the County's future rate setting and spending decisions, is a violation of 11 USCA §904.

H. The Debtor's Attempt to Deny Ratepayer/Creditors the Protection of Part II of the Rules By Mooting AP Case 120 Claims with Plan Confirmation Hearings Violates Bankruptcy Procedural Rule 7001.

A "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,

equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). A "debt" is "liability on a claim." 11 U.S.C. § 101(12). Ratepayer/Creditors "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). V. W. v. City of Vallejo, 2013 U.S. Dist. LEXIS 109145 (D. Cal. 2013). Because sewer charges and fees are secured by an assessment type lien on Ratepayer/Creditors r property connected to the system, and Sewer creditors are claiming a right to enforce that lien through the terms of the 1997 Indenture and through this Plan, the substantive nature of the property rights held by Ratepayer/Creditors, the Debtor/County and the Swap/Warrant holders making a claim to the same property interests claimed by the Ratepayer/Creditors is defined by state law. Chiasson v. J. Louis Matherne and Assocs. (In re Oxford Management, Inc.), 4 F.3d 1329, 1334 (5th Cir. 1993); see also Butner v. United States, 440 U.S. 48, 55, 59 L. Ed. 2d 136, 99 S. Ct. 914 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding."). Haber Oil Co. v. Swinehart (In re Haber Oil Co.), 12 F.3d 426, 435 (5th Cir. La. 1994). Ratepayer/Creditors have a right to have those property rights determined in a lawsuit that has been filed as an adversary proceeding.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings. Actions for turnover, injunctive relief, and declaratory judgments are "adversary proceedings" under the Federal Rules of Bankruptcy Procedure and are properly commenced by filing a complaint, not by motion. Bankr. R.P. 7001, et seq. In re Davis, 40 B.R. 934, 936 (Bankr. D.S.D. 1984) Ratepayer/Creditors' adversary proceeding is initiated under Rules 7001(2), (9) and 7003 of the Federal Rules of Bankruptcy Procedure. (Case 12-00120-TBB Doc 64 Filed 04/04/13 Page 8 of 44). An adversary proceeding to determine the validity, priority, or extent of a lien proceeds is a lawsuit, incorporating nearly verbatim most of the Federal

Rules of Civil Procedure. Chase Auto. Fin., Inc. v. Kinion (In re Kinion), 207 F.3d 751 (5th Cir. Tex. 2000)[5]

The preferred method for adjudicating the validity and/or priority of a lien is through commencement of an adversary proceeding. Indeed, it appears that the weight of authority supports adjudicating such matters through adversary proceedings in accordance with Fed.R.Bankr.P. 7001. See, e.g., Chase Auto. Fin., Inc. v. Kinion (In re Kinion), 207 F.3d 751, 757 (5th Cir. 2000); In re Kressler, Civ. A. No. 00-5286, 2001 U.S. Dist. LEXIS 11723, at *9 (E.D.Pa. Aug. 9, 2001); In re Nuclear Imaging Systems, Inc., 260 B.R. 724, 731 (E.D.Pa. 2000); In re Metro Transportation Co., 117 B.R. 143, 146 (Bankr. E.D.Pa. 1990). In re Brown, 311 B.R. 409, 413-414 (E.D. Pa. 2004). As the 5th Circuit in *In re Kinion* stated:

> ***if at some point the Kinions believed they had grounds to challenge the secured status of Chase's loan, the procedure sanctioned by the Bankruptcy Rules calls for an adversary proceeding. See Bankruptcy Rule 7001, et seq. An adversary proceeding to determine the validity, priority, or extent of a lien proceeds is a lawsuit, incorporating nearly verbatim most of the Federal Rules of Civil Procedure. The court's order stripping Chase's lien complied with none of the usual procedures.

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[5] Although Debtor has filed an objection to the Claim, to create a contested matter, this objection is duplicitous since the existing AP 120 proceeding is the preferred way to determine a validity of Sewer Swap/Warrant creditors lien question. ("The objection to a claim initiates a contested matter unless the objection is joined with a counterclaim asking for the kind of relief specified in Bankruptcy Rule 7001. In addition to the requirements of Rule 9014, which governs contested matters, Rule 9004 specifies that the objection contain a proper caption designating it an objection to a proof of claim. It has been said that the filing of a proof of claim is tantamount to the filing of a complaint in a civil action, see Nortex Trading Corp. v. Newfield, 311 F.2d 163 (2d Cir.1962), and the trustee's formal objection to the claim, the answer. See 3 Collier on Bankruptcy para. 502.01, at 502-16. Upon the filing of an objection, the trustee must produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim. Id. at 502-17; see also In re Eastern Fire Protection, Inc., 44 Bankr. 140 (Bankr.E.D.Pa.1984)." In re Simmons, 765 F.2d 547, 552 (5th Cir. Miss. 1985)).

> "Chase was never served with notice that its lien would be challenged; it never received notice of the hearing date for any such challenge; and no evidentiary hearing was held. The court's allowance of thirty days to file a motion for reconsideration cannot substitute for the before-the-fact protections of creditors' interests embodied in the adversary rules."

Chase Auto. Fin., Inc. v. Kinion (In re Kinion), 207 F.3d 751, 757 (5th Cir. Tex. 2000); *Accord,*

Parker v. Livingston (In re Parker), 330 B.R. 802, 807 (Bankr. N.D. Fla. 2005). The Ratepayer/Claimants AP Case 120 Complaint must be resolved in a lawsuit conducted under the Federal Rules of Procedure prior to Plan confirmation.

I. Under 11 USC 943(b)(6) to confirm a plan, any regulatory or electoral approval must be obtained, or the plan expressly conditioned on such approval. The New Sewer Warrants under the Plan cannot be acted upon without a majority vote under Amendment 73 of the Alabama Constitution. The vote is a condition to confirmation.

(See, discussion in Plan Opposition, p. 29)

III. CONCLUSION

The County has negotiated long and hard for a settlement but only with one Class of claimants—those who had the receiver appointed. The Receiver appointment was based on the validity of the liens on sewer revenues created by the 6th, 9th and 10th supplemental indentures with the County Debtor could have but did not challenge. The County has been working in concert with the potentially unenforceable Swap/Warrant Claimants who now have the position of insiders. The Rate Increases proposed by these claimants will result in overcharges to the Ratepayer claimants of over $10 billion. The impact on the quality of life and disposable income of county citizens is a part of Plan confirmation because of the requirement that the Plan be feasible. In this regard we have attached the Declarations of Commissioner Bowman, the county Supervisor on the district where the largest number of residents are connected to the Sewer system, Andrew Bennett, the Assistant County Assessor, Bessemer cut, and Sheila Tyson -, newly elected City of Birmingham councilwoman and a community association leader and public advocate.

The Revised Plan must reflect both the financial ability to pay and not be forbidden by law.

We respectfully ask the court to deny the Revised Plan and fashion an order that requires a Plan more closely aligned to the Ratepayer/Creditors Alternative Plan.

Dated October 10, 2013

Respectfully submitted,

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